



6351-01-P

## **COMMODITY FUTURES TRADING COMMISSION**

### **Public Alert – Registration Deficient List**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice; Request for Comment.

**SUMMARY:** The Commodity Futures Trading Commission (“CFTC” or “Commission”) is announcing a new program, the Registration Deficient List (“RED List”), that will post on the Commission’s website and distribute to the public certain factual information about foreign entities that are soliciting or accepting funds from U.S. residents and are acting in a manner that requires registration but are not appropriately registered with the CFTC.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by “Registration Deficient List,” by any of the following methods:

- The agency’s website, at <http://comments.cftc.gov>. Follow the instructions for submitting comments through the website.
- Mail: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- Hand Delivery/Courier: Same as Mail above.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to [www.cftc.gov](http://www.cftc.gov). You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.<sup>1</sup>

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from [www.cftc.gov](http://www.cftc.gov) that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:** Rick Glaser, Deputy Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW., Washington, DC 20581, phone: (202) 418-5358, email: [rglaser@cftc.gov](mailto:rglaser@cftc.gov).

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<sup>1</sup> 17 CFR 145.9 (2014).

**SUPPLEMENTARY INFORMATION:** The CFTC today is announcing a new program, effective immediately, for informing the public about unregistered foreign entities engaged in the solicitation or acceptance of funds from U.S. residents at a retail level. These entities solicit and/or accept funds for investments in, among other things, foreign currency (“forex”) and binary options. Through this new program, the Registration Deficient List (“RED List”), the Commission will publish on its web site the names of unregistered foreign entities that the Commission has reason to believe may be required to register with the CFTC but are not, in fact, registered. Publication does not represent final Commission disposition or a final Commission order. By making this information publicly available, the Commission expects investors to make more informed decisions whether to trade with or through such an entity. The more U.S. investors trade with and through registered entities, the more likely that their funds have a better chance of being protected.

I. Background

The Commission often receives investigative leads relating to foreign entities that solicit and/or accept funds from U.S. residents at a retail level. For example, the CFTC’s Division of Enforcement (“Enforcement”) has investigated approximately 60 such cases in the past twenty-four months. These cases involve unregistered foreign entities that engage in, among other things, forex in a capacity similar to Retail Foreign Exchange Dealers, Introducing Brokers, Commodity Trading Advisors or Commodity Pool Operators and binary options.<sup>2</sup> Almost all, if not all, of these foreign entities are acting in a capacity that requires them to be registered with the Commission.

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<sup>2</sup> The Commission uses forex and binary options merely as illustrative examples. Any entity that meets the criteria set forth below is a candidate for inclusion on the RED list.

In many cases, there are obstacles to bringing an effective enforcement action against these types of entities. For example, the Commission spends considerable resources investigating these matters. Even if Enforcement is able to develop a legal case against one of these entities, international service of process is cumbersome, often takes a very long time to effectuate and is not always successful. Even if service of process is successful, many of these entities are judgment proof.

The Commission believes that a consumer protection approach has a better chance of success than continuing to spend resources on Enforcement investigations and litigations that have a limited chance of success. The proposed RED List would disseminate information about certain foreign entities into the marketplace so that U.S. residents would be able to make more informed choices about how they trade their money. This approach is used by other regulators, including the Securities and Exchange Commission.<sup>3</sup>

## II. The RED List

In light of the challenges associated with taking enforcement action against such entities, the Commission believes it useful to educate and empower prospective investors. The goal of the RED List is to provide prospective investors with information regarding unregistered soliciting entities before they invest. For a foreign entity to be listed on the

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<sup>3</sup> There are approximately 47 countries that issue, or have issued, lists, warning letters, or public statements, including Belgium, Brazil, British Virgin Islands, Canada (Ontario, British Columbia and the Quebec provincial regulators), Croatia, Denmark, Hong Kong, Ireland, Malaysia, Panama, Poland, Cyprus, Singapore, Spain, Sweden, Switzerland, Thailand, The Netherlands, the United Kingdom and the U.S.

The International Organization of Securities Commissions (“IOSCO”) has established an investor Alert Portal on its website to receive and publish alerts and warnings from its members about firms which are not authorized to provide investment services in the jurisdiction that issued the alert or warning.

CFTC's RED List, reasonable grounds must exist to believe that the entity meets the following six criteria:

1. The entity is foreign;
2. The foreign entity has no or limited presence in the United States;<sup>4</sup>
3. The foreign entity is soliciting and/or accepting funds from U.S. residents;
4. The foreign entity is offering a product within the Commission's jurisdiction (e.g. "forex");
5. The foreign entity is required to be registered; and
6. The foreign entity is not registered.<sup>5</sup>

If the foreign entity meets these criteria, Enforcement will propose that it be included on a publicly disclosed list stating that the foreign entity is acting in a capacity that appears to require registration but is not registered with the Commission. This list will then be publicized by the Commission's Office of Consumer Outreach by a variety of different methods and media.

The RED List process contains three separate levels of review before a recommendation is made to the Commission for inclusion on the RED List. First the Intake Officer reviews the complaint and makes an initial determination of whether a foreign entity should potentially be included in the RED List. This initial determination is passed to a Triage Officer who will conduct a limited investigation and then make a recommendation to an Enforcement Deputy Director. The Deputy Director will, based on the information before him/her, make a decision as to whether to recommend to the

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<sup>4</sup> Merely registering a website with a U.S. based domain name registrar does not constitute physical presence.

<sup>5</sup> If the foreign entity offers binary options there is one additional criterion: whether the entity is a foreign board of trade. If it is a foreign board of trade, then the entity would not be eligible for the RED list.

Commission that it include a foreign entity on the RED List. These levels of review are to ensure that only those foreign entities that should be included on the RED List are included on the RED List.

The CFTC is committed to providing accurate information to investors using the RED List. Before listing an entity on the RED List, Commission staff will notify the entity by Notice Letter of the Commission's intent to list the entity. The entity will have the opportunity to respond to the Commission and provide relevant documentation. If the foreign entity does not respond to the notice letter or provides an unsatisfactory response, Enforcement will recommend to the Commission that a foreign entity should be included on the RED List.

To implement the RED List, the Commission will post on its public web sites, <http://www.SmartCheck.gov/REDList>, the names, and only the names, of unregistered soliciting foreign entities that have been subject of complaints received by the CFTC. The RED list will contain the following information:

### **RED (Registration Deficient) LIST**

#### **List of Foreign Entities That Have Been Identified as Acting in a Capacity That Appears to Require Registration but Are Not Appropriately Registered With the Commission**

The Commodity Futures Trading Commission ("CFTC") frequently receives investigative leads and questions from the public about foreign entities that solicit and/or accept funds from U.S. residents at a retail level. For example these leads and questions can relate to, among things, foreign entities that engage in foreign currency ("Forex") in a capacity similar to Retail Foreign Exchange Dealers ("RFEDs"), Introducing Brokers, Commodity Trading Advisors or Commodity Pool Operators

<http://www.cftc.gov/ConsumerProtection/FraudAwarenessPrevention/ForeignCurrencyTrading/index.htm>; and binary options

[http://www.cftc.gov/PressRoom/PressReleases/fraudadv\\_binaryoptions](http://www.cftc.gov/PressRoom/PressReleases/fraudadv_binaryoptions). Many of these foreign entities are acting in a capacity that requires them to be registered with the CFTC.

If a foreign entity is registered with the CFTC, then it is subject to CFTC regulations and oversight that apply to registrants. Generally, foreign entities that solicit you to trade are required to register with the CFTC. For this reason, it is important for you to consider whether the foreign entity that solicits you is, in fact, registered with the CFTC.

In certain cases, a preliminary review by the CFTC reveals that foreign entities that solicit and/or accept funds from U.S. residents at a retail level have no or limited U.S. presence, and act in a capacity that requires registration, but are not in fact registered. In an effort to warn the public about these entities, the CFTC is publishing the names of those foreign entities.

The goal of this list is to provide information to U.S. consumers about foreign entities that are acting in an unregistered capacity and to help them make more informed decisions about whether to trade with or through such an entity. The more that U.S. consumers trade with and through registered entities, the more likely that their funds will have a greater chance of being protected.

The named foreign entities currently appear to be acting in a capacity that requires registration with the CFTC but are NOT registered with the CFTC.

[Inserted will be a list of all of the foreign entities that have met the criteria, as approved by the Commission.]

The inclusion of an entity's name on the RED list does not mean that the CFTC or a Court has concluded that a violation of any provision of the Commodity Exchange Act or the Commission's Regulations has occurred.

### III. Review of RED List

Twice annually, on or about June 30 and December 31, the Triage Officer will review the RED List and, if it appears that a minimum of 12 months have elapsed during which no complaints have been received regarding the a foreign entity and the foreign entity's website is either inactive or taken down, Enforcement will submit a recommendation for Commission consideration to move the foreign entity from the active portion of the RED List homepage to the archival portion of such page.

Issued in Washington, DC on September 9, 2015, by the Commission.

Robert N. Sidman,

Deputy Secretary of the Commission.

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